

MARK SCHERZER, ESQ. (MS-2622)  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SUSAN ZURNDORFER, :

Plaintiff, : 04 CIV 3497 (RCC)

-- against -- :

UNUM LIFE INSURANCE COMPANY :  
OF AMERICA, d/b/a UNUM PROVIDENT :

Defendant. :

**AFFIDAVIT OF  
MARK SCHERZER  
IN OPPOSITION TO MOTION FOR  
JUDGMENT ON THE  
ADMINISTRATIVE RECORD**

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STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

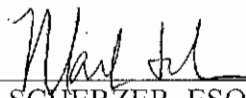
Mark Scherzer, being duly sworn, deposes and says:

1. I am the attorney for plaintiff, Susan Zurndorfer. I make this affidavit in opposition to the motion of defendant, UNUM Life Insurance Company of America ("Unum"), for judgment on the administrative record. The purpose of this affidavit is to place before the court facts regarding plaintiff's inability to ascertain the details of Unum's decision-making in administering her claim.

2. Unum's answers to interrogatories are set forth as Exhibit 3 to my affidavit in support of plaintiff's motion for summary judgment, sworn to April 13, 2005. In response to the interrogatories regarding the roundtables at which Ms. Zurndorfer's claims were discussed, each

of the potentially knowledgeable claim personnel still in Unum's employ – including “Sally Seidl and Brian Dyer, who were Ms. Nicholas’ claims consultants,” as well as “Kenneth Martin, [Nurse] Janice M. Albert, [Nurse] Diana Martin, Daniel Krell, M.D., [Nurse] Susan Grover, Richard Byard and Alan Neuren, M.D.” – disclaimed any recollection of any roundtable discussion regarding the claim and denied possession of any documents relating to the roundtables other than those contained in the administrative record (Responses to Interrogatories 1 and 2). Unum noted that the customer care representative who made the administrative record references to the roundtable, Ms. Janet Nicholas, was no longer in its employ. It provided no last known or current address for Ms. Nicholas.

3. In an effort to find Ms. Nicholas, using internet search engines my office staff generated lists of all persons sur-named Nicholas with listed telephone numbers first in Portland and then in the State of Maine within a 50 mile radius of Portland, approximately 115 numbers. I telephoned each number, ultimately making contact by speaking with someone or leaving a message at all but approximately 5 of the numbers (which never answered). In the course of these calls I located only one Janet Nicholas, whose family told me she had never worked at Unum. I was unable to locate the Janet Nicholas who had been the customer care specialist with respect to Ms. Zurndorfer's claim.

  
MARK SCHERZER, ESQ. (MS-2622)

Sworn to before me this  
19<sup>th</sup> day of May, 2005

  
Notary Public

A. CHRISTOPHER WIEBER  
Notary Public, State of New York  
No. 62W1 5012419  
Qualified in New York County  
Commission Expires June 15, 2007